

Application No.: 10/660,737
Inventor: MARTIN
Reply to Office Action of 13 July 2006
Docket No.: 8129.004

REMARKS/ARGUMENTS

Restriction Requirement

The Examiner has required election of, and restriction of the application to, one of the following groups of claims:

- Group I. Claims 1-10; drawn to a soluble composition extracted from a plant material comprising three or more class of substances selected from the group consisting of carotenoids, anthocyanins, fatty acids, terpenes and alkaloids.
- Group II. Claim 11; drawn to a soluble composition extracted from a plant material comprising carotenoids, anthocyanins and complex tannins in relative ratios that mimic their ratios in the unextracted plant material.
- Group III. Claims 12-14; drawn to a soluble composition extracted from a plant material comprising organic acids, amino acids, fatty acids, carotenoids, phytoestrogens, anthocyanins, flavones/isoflavones, saccharides, terpenes and complex tannins in relative ratios that are within 100% of their ratios in the unextracted plant material.

Applicants hereby provisionally elect Group I, claims 1-10, with traverse.

The Examiner asserted that the products of Groups I-III were each essentially unsearchable as claimed based upon the vast plethora of potential soluble plant compositions encompassed by the instant claim language and different and distinct because Group I does not require tannins, which are required by Groups II and III, and Groups II and III were different from one another because Group II does not require the presence of numerous substances (organic acids, amino acids, fatty acids, etc.), which are nor required by Group III.

As Applicants noted in their response to the Examiner's previous restriction requirement, according to MPEP § 803, restriction is appropriate only when the groups can be shown to be different AND there would be a serious burden placed upon the Examiner to examine more than one group of claims. Additionally, there must be both two-way distinctiveness and reasons for

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insisting on restriction are necessary, i.e., separate classification, status in the art, field of search. Finally, “[w]here, however, the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among >independent or< related inventions.” MPEP § 808.02

In the instant case, contrary to the Examiner’s assertion that “these inventions are independent or distinct...and the inventions require a different field of search,” Applicants respectfully submit that the classification and the field of search is the same. More specifically, according to the Manual of Patent Classification, each of Groups II and III (Class 424, subclasses 732 and 769) are “indented under subclass 725” (Group I). Accordingly, a search of Class 424, subclass 725 (Group I) necessarily includes a search of subclass 732 (Group II) and subclass 769 (Group III). Therefore, contrary to the Examiner’s assertions, a different field of search is not required.

In view of the above, then, Applicants respectfully submit that the Examiner has failed to establish that examination of Groups I, II and III would present a “serious” burden upon the Office. Indeed, while the Examiner asserts that each of Groups I, II and III are classified in separate classes/subclasses, the simple fact remains that the search is the same for each of Groups I, II and III.

Accordingly, the Restriction Requirement should be withdrawn.

Restriction of Species

The Examiner required the Applicants to elect a single disclosed species:

A. For the products of Groups I-III, the various disclosed plants from which the extracted plant material-soluble composition is obtained; and,

B. For the product of Group I, the various combinations of three or more of the recited substances instantly claimed.

With regard to A above, Applicants provisionally elect the plant species *Vaccinium macrocarpon* (of which claims 1-14 read on), with traverse.

With regard to B above, Applicants provisionally elect the substance species

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carotenoids, anthocyanins, and alkoloids (claims 1-10), with traverse.

As noted in Applicants response to the previous restriction of species, under MPEP § 806.04(f), to require restriction between claims limited to species, it must be shown that the claims do not overlap in scope. The Office action fails to do so. Accordingly, the species restriction should be withdrawn.

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Conclusion

Applicants respectfully submit that the present application is in condition for allowance, which action is courteously requested. Please charge any shortage in fees due in connection with the filing of this paper to Deposit Account 14.1437. Please credit any excess fees to such account.

Respectfully submitted,

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